The Civil Courts Bill.

Mr. Ananda Row.—I beg to propose that the Report of the Select Committee on the Civil Courts Bill and the Bill as amended by them be taken up for consideration. The Bill has already been published in the Gazette. For the sake of convenience, I propose that the Bill be read section by section and the amendments of which notice has been given be also considered in the order of the sections.

Seconded by Mr. Sankara Menon.

The motion was put and agreed to.

Section 4.

Mr. Subramonia Iyer.—Sir, I beg leave to move that in Section 4 of the Bill, paras 2 and 3 of the present Civil Courts Regulation be incorporated. (The paras were read.)

Paras 2 and 3 of Section 3 of the present Civil Courts Regulation (Regulation I of 1057) have been omitted in the present Bill. This would indicate that the District Courts in the State would, in future, have only one Judge each. The omission at present of the express provision in the former Regulation reserving to Government the power to fix the number of Judges in each District Court cannot but point to this object. The question then would be whether this measure would be conducive to the bettering of the judicial administration of the State and would meet the exigencies of the time. A reference to the nature of the work the District Judges have to get through at present, will convince us that they will not be able to cope with the work coming before them single-handed. It is rather multifarious. They are ex-officio Sessions Judges. On the average, the Sessions Courts have to dispose of 125 sessions cases, 265 criminal appeals besides 50 revision petitions and to revise nearly 17,000 calendars every year.

Further, there are certain cases in which the District Courts alone have jurisdiction, such as those under the Guardian and Wards Regulation, appeals under the Land Acquisition Regulation, the Forest Regulation, and the Joint Stock Companies Regulation, summary suits under the Jenmi and Kudiyan Regulation and suits to which the Sirkar is a party. Besides these, the original and appellate civil work before them is such that, even with the assistance of the Second Judges, they are unable to grapple with the work coming before them. The incessant complaint against the delay of the work before them and the heavy arrear returns at the end of the year do but confirm this. It may be urged that the present proposal to raise the small cause jurisdiction of the Munsiffs as well as their original jurisdiction would tend towards lightening the work of the District Courts. Even if the so-called concession is granted, the reduction of work would be only trivial and not worth the name. The average number of appeals in personal suits between Rs. 50 and Rs. 100 during the last 10 years has been only 250 in the whole State, which means 50 for every court which, under the proposed change, would become non-appealable. This would not, to my mind, afford appreciable relief to the District Courts. The next proposal is with respect to original suits. It should be admitted that by this change would be taken away a good portion of the original work of the District Judges, for the number of suits under Rs. 2,000 in the whole State can approximately be taken as 250 *i. e.*, roughly 40 per cent. of the whole file. But to counteract against this, the present Bill confers upon them the right to hear appeals in suits up to Rs. 2,000. This would mean that a major portion of the appellate work of the High Court or more than 500 appeals a year involving considerable labour devolve upon the District Judges. Thus the District Judge will have, if the present Bill is passed, to dispose of, on the average, 25 sessions cases, 53 criminal appeals, about 10 revision petitions, to revise nearly 3,500 calendars and dispose of 50 original suits and nearly 500 appeals involving larger interests than at present, besides attending to 400 execution applications and the departmental affairs and other miscellaneous work incidental thereto in the year the working days wherein can roughly be put down as 210. This is too much to be expected of a single officer. In these circumstances, I think

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it undesirable to omit the wholesome provision we have at present and would therefore propose that paras 2 and 3 be retained.

Seconded by Mr. Udaya Varma Raja.

President.—The question is whether, as a matter of policy, we should have the provision. If the necessity in any place for a District Court is proved, a new District Court should, I suppose, be opened. The High Court will have to consider the whole matter carefully and make such recommendations as may be necessary to work the Judicial department in accordance with the new Regulation. This question of having two Judges for one Court had to be considered by Government sometime ago, in connection with the prayer for the constitution of a Zillah Court at Kottayam. I should like to know the views of the members as to which is better, to have more Judges for the existing District Courts or to establish more independent Courts as may be found necessary.

Mr. Udaya Varma Raja.—I think it is better to have more Judges.

Mr. Kuruvila.—It would suit the convenience of the parties to have the Courts nearer their homes. It would be generous on the part of Government if they could give additional District Courts instead of appointing more Judges in each Court.

Mr. Sri Narayanan Tampi.—It is desirable to have more Courts, each with defined jurisdiction.

Mr. Govinda Pillai.—So far as public convenience is concerned, it would be better to have two Courts, even if that be more expensive than to attach an additional Judge to the same Court. There is no question about that. But it would be more expensive.

Mr. Padmanabha Iyer.—I also think so.

Mr. Sankara Menon.—There is no doubt that it is more convenient to have different Courts, as Mr. Kuruvila says.

Mr. Ananda Row—So far as the administration of justice is concerned, it would be more convenient to have different Courts.

President.—When once the enabling provision is put in, the tendency on the part of Government would be to have more Judges in one Court because that would be cheaper. The tendency would be that way, whereas, if the power is not given, Government would be bound to work up to public convenience.

Mr. Udaya Varma Raja.—If the provision is not put in, Government are likely to feel the difficulty afterwards.

President.—A regular District Court would carry with it the appointment of men of higher qualifications and capacity. I do not think, Mr. Subramonia Iyer, that we can accept your amendment, because there is practically a unanimous consensus of opinion that the more correct policy would be not to give the power to the Executive Government to put in more than one Judge in each Court. If you give the power, the chances are that it would be freely used, because of the natural tendency to do things as cheap as possible. Both the official and non-official members seem to think that public convenience would be better served by having independent Courts. It is therefore better to put the law in such a way as to make that the only possible course. The High Court, as the administrative head of the department, would no doubt formulate proposals so as to serve the convenience of the public.

Mr. Subramonia Iyer's motion was then put to the meeting and lost, the majority voting against it.

Mr. Subramonia Iyer.—I beg to propose that Section 11 of Regulation II of 1070, amending the Code of Civil Procedure, be added to this Section.

It seems to me that the Civil Courts Regulation is the proper place for this provision. It is now in operation in the Munsiffs' Courts at Trivandrum and Quilon

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and its help will have to be sought whenever itinerant Munsiffs' Courts are opened for giving relief to congested Courts as we had till very recently. One would naturally look for a provision of the kind in the Civil Courts Regulation and it seems desirable to avail ourselves of this opportunity when the same is re-enacted as a whole to have it there instead of in the Code of Civil Procedure.

President.—If more Munsiffs are found necessary, why not give them independent jurisdiction instead of the same jurisdiction. Should not that be the policy?

Mr. Govinda Pillai.—Certainly, that would be the right thing. But it would be more expensive. The provision of a separate building within the altered jurisdiction and a separate establishment would then become necessary. Further, one other point has to be considered in this connection. Unlike the case of District Courts, the congestion of work in some of the Munsiffs' Courts is only temporary, as past experience has shown. The additional Court, if established, may not be permanently required but may be removed to another place after a time. The establishment of a pucca building &c. in the place will therefore be unnecessary expenditure.

President.—In that case, it is desirable to take power to appoint more Munsiffs to one Court in this Regulation itself.

After some further discussion, it was resolved, by a majority of the Council, that the following be inserted as clause (2) of Section 4.

"(2) The number of Munsiffs to be appointed under this Regulation shall be fixed and may, from time to time, be altered by Our Government."

Section 8.

Mr. Subramonia Iyer.—I would propose that the following be inserted as "clause (2) of Section 8."

"If Our Government assign the same local jurisdiction to two or more Munsiffs, they shall declare which of them shall be deemed the Principal Munsiff, and the other or others shall be Additional Munsiff or Munsiffs."

Seconded by Mr. Ananda Row.

Carried.

Section 11.

President.—The expression "Civil Courts" is apparently not correct. I think it ought to be "Munsiffs' Courts." The expression "Civil Courts" has been defined to include District and Munsiffs' Courts only.

Mr. Ananda Row then proposed the amendment and it was carried.

Section 12.

Mr. Udaya Varma Raja.—Sir, the proposal to increase the ordinary jurisdiction of Munsiffs to Rs. 2,000 is at once unnecessary and injurious. The effect of doing so will be to make the Munsiffs' Courts practically the Principal Civil Courts in Travancore. Transactions of over Rs. 2,000 are very rare in this country. Again, the Bill, when passed into law, will tend to swell the file of the Munsiffs instead of giving them relief. If relief to the Courts is to be given, without sacrifice of the quality of the justice rendered, it is surely inadvisable to enhance the jurisdiction of the Munsiffs' Courts. It may be argued that, in Madras, District Munsiffs have original jurisdiction up to Rs. 2,500. I would meet that argument by saying that in Bengal, the North-West Provinces and Assam, the pecuniary jurisdiction of Munsiffs extends ordinarily to suits of Rs. 1,000 only, though it may be increased to Rs. 2,000 on the recommendation of the High Court. Even in the advanced Native State of Mysore, the jurisdiction of Munsiffs is ordinarily Rs. 1,000 only, while Government take power to increase it to Rs. 2,500. The present state of our country does not warrant the enhancing the jurisdiction of Munsiffs further than

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Rs. 1,000. My point, Sir, is that the manner in which the work is done has as much to do with the arrears as the number of suits. In original suits, in both the District and Munsiffs' Courts, the hearing of evidence is so often adjourned that the Court and the Pleader and the suitor are exhausted by the feat of examining half a dozen witnesses on each side. The time and the money spent are out of all proportion to the work done and benefit obtained. I would like to suggest that the relief to the Courts should take the direction of simplifying and quickening procedure as laid down in the new Code of Civil Procedure for British India. For these reasons, I beg to propose that the word "one thousand" be substituted for "two thousand" in line 7 of Section 12.

Mr. Subramonia Iyer:—I beg to second the proposition. The ordinary jurisdiction of our Munsiffs did not exceed Rs. 100 until 1040, when by Regulation IV of that year it was raised to Rs. 200. It was after 16 years' experience that His Highness' Government thought it fit to raise it to Rs. 500 by Regulation I of 1057. This continued for a period of another 20 years, when by Regulation I of 1077 it was raised to Rs. 1,000. Six years have hardly elapsed now and it seems to me rather too soon to think of further enhancing the same. The position of our Munsiffs has not, during this short interval of six years, improved as regards status or personnel. The ordinary jurisdiction of Munsiffs in the sister States of Cochin and Mysore is, I understand, only Rs. 1,000. It is true that, in the Madras Presidency, the ordinary jurisdiction of Munsiffs is fixed at Rs. 2,500. The circumstances of this State entirely differ from those of the districts in the Madras Presidency and our people are comparatively very poor. When appeals lie to the Privy Council only in suits of more than Rs. 10,000 in value in British India, all judgments and decrees in appeals of Rs. 2,500 and above have to be confirmed by Sign Manual here after disposal by a Bench of three Judges in Our High Court. In my opinion the time has not yet arrived to leave the trial of suits of more than Rs. 1,000, which is the life fortune of most of the families in Travancore, in the hands of Munsiffs and their Vakils, most of whom will of course be raw and inexperienced. If a case be spoilt in an original court, it is, I need hardly observe, hopeless to remedy it in the court of appeal. Thus the investing of the Munsiffs with higher powers would be felt as a great hardship by the litigant public. In the second place, it will be admitted on all hands that the Munsiffs who are now hard-worked stand in need of relief. The relief ought to come naturally by means of taking away a portion of their work. I do not consider it wise to saddle them with additional and more important work and in view to counteract the same, to increase the number of Munsiffs, of whom we have already too many—23 located within 8 or 10 miles of each other. The increase in the number of Munsiffs' Courts and their location in closer proximities to one another and nearer the homes of suitors will only have the effect of further increasing the already heavy and ruinous litigation of the State.

Further, the proposed measure would entail heavy work to the Munsiffs in another direction. The investing of higher pecuniary jurisdiction would necessarily involve a proportionately large work in the execution department. One conversant with the working of this branch of judicial administration must needs admit that this does not receive the amount of attention that is legitimately due thereto. The greater the value of the decree, the more difficult becomes the realisation of the benefits thereunder. Though the number of additional suits in each Munsiff's Court by the proposed change may be very small, the quantity of work in the execution department must needs be great and the hardships of the parties thereby become greater. Thus the proposed change is undesirable and I recommend that the same be dropped.

Mr. Kuruvila.—Sir, I have already expressed my views on this point in my minute attached to the Select Committee's Report.

Messrs. Ananda Row, Sankara Menon, Padmanabha Iyer and Govinda Pillai spoke against the motion.

President.—The provision in question is the backbone of the Bill. Government cannot accept the amendment.

The amendment was lost by a majority.

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Section 13.

Mr. Udaya Varma Raja.—Sir, I am sorry that the Select Committee, in fixing the limit of small cause jurisdiction of Munsiffs, have not looked to the interests of the poor people of Travancore. The principal objection to raise the small cause powers of Munsiffs is the well known fact that Rs. 100 is a very large sum to a great number of people of this State. To decide cases without a regular trial and to deny the right of appeal in respect of a sum which represents two years' expenses of an ordinary ryot, are not results which can be compensated by any amount of relief to the Courts.

In the Madras Presidency, Munsiffs are ordinarily invested with small cause jurisdiction up to Rs. 50. It is only on the recommendation of the High Court that the same is raised to Rs. 200 in individual cases. I beg leave to state that the public do not see the necessity or justification for giving to our Munsiffs power to try, as small cause suits, suits whose value ranges between Rs. 50 and Rs. 100. The object of raising the small cause jurisdiction of Munsiffs is said to be, to give relief to the Munsiffs who are working under high pressure. As to the magnitude of the relief itself, there seems to be some miscalculation. In the case of an uncontested money suit, the Court takes practically the same time to decide it, whether as a civil or as small cause suit. When a money suit is contested and witnesses are called, almost the same amount of time is taken up in the examination. The saving in the trouble of taking down depositions cannot be much and that in writing judgment is only slight. The greatest saving will be in the matter of appeals and that will benefit the District Courts and not the Munsiffs' Courts. I beg therefore, to propose, that in line 6, Section 13, the word "fifty" be substituted for "one-hundred".

Mr. Subramonia Iyer.—I second it. Summary jurisdiction in the administration of civil justice has, I believe, nowhere found favour. It has however been considered a necessary evil. The small cause jurisdiction of our Munsiffs did not exceed Rs. 10 until 1057, when, by Regulation I of that year, it was raised to Rs. 20. After an experience of nearly 10 years, it was raised to Rs. 30 by Regulation III of 1066. 11 years later the summary jurisdiction of some of the tried Munsiffs was made raisable to Rs. 50 on the recommendation of the High Court. But Rs. 30 continued to be the normal jurisdiction in the case of beginners. Hardly six years have now elapsed and it is my firm conviction that it is too early to invest all our Munsiffs with small cause jurisdiction up to Rs. 100 alike. With all the safeguards provided for by the Code of Civil Procedure for the trial of regular cases, the chances of miscarriage are remote and the fear of his decisions on facts being scrutinised by an appellate authority, is sufficient to deter a Munsiff from forming hasty conclusions. When these safeguards are taken away, there is every likelihood of the results being unsatisfactory. Speaking personally, I would not advocate any enhancement of the summary jurisdiction. If such enhancement cannot be helped in the interests of Government, I submit that it should not be by leaps. I think that for the present, the normal small cause jurisdiction of the Munsiffs should be fixed at Rs. 50, and made raisable to Rs. 100, in the case of tried Munsiffs alone, on the recommendation of the High Court.

President.—I have carefully considered this question. Our Munsiffs as a class are a good set of men. In the Madras Presidency, the minimum is fixed at Rs. 50, but it is raisable to Rs. 200. The tendency in the Madras Presidency has been to invest a large number of the Munsiffs with power up to Rs. 200. All things considered, I think that, in this matter, it is better to stick to the limit prescribed in the clause—as put in by the Select Committee. Government cannot accept the amendment.

The motion was then put to the vote and lost by a majority.

Mr. Subramonia Iyer withdrew his motion to fix the small cause jurisdiction of Munsiffs at Rs. 70 and to raise it to Rs. 100 in individual cases on the recommendation of the High Court.

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Section 14.

Mr. Ananda Row.—I beg to propose that "Civil Procedure Code" be altered into "Code of Civil Procedure" to secure uniformity of expression throughout the Bill.

Seconded by Mr. Kuruvila.

Carried.

Mr. Govinda Pillai.—I beg to propose that the following be added as a separate sentence at the end of clause (*e*) of Section 14.

"In other respects, the procedure in such suits shall be that prescribed by the Code of Civil Procedure."

In the absence of a provision laying down the procedure, a lawyer might raise the question before a Court that a particular procedure is not sanctioned by the Civil Courts Regulation. The Munsiff will then be in a difficulty. Further, the British Small Cause Court Act of 1887 contains an express provision of the kind.

Seconded by Mr. Sankara Menon.

Carried.

Section 16.

Mr. Ananda Row.—I beg to propose that clause (1) be modified as follows:—

"Appeals from original or appellate decrees or orders of a District Court shall, when such appeals are allowed by law, lie to the High Court."

The expression "regular appeals" does not occur in the Civil Procedure Code. The amendment is intended to make the language precise.

Seconded by Mr. Padmanabha Iyer.

Carried.

Mr. Subramonia Iyer.—I beg to propose that the following be added at the end of clause (2) of this Section:—

"except when the amount or value of the subject matter of the suit exceeds one thousand rupees, in which case the appeal shall lie to the High Court."

I have already protested against raising the ordinary jurisdiction of the Munsiffs beyond what it is at present, *viz.*, Rs. 1,000; but it has not been accepted by the Council. I cannot see any reason for depriving the litigant public of the benefits they now have of their appeals in suits of more than Rs. 1,000 in value being heard by a Division Bench of the High Court. The work of the High Court as it stands at present is not too heavy for the four judges now constituting it. The District Judges (including the Second Judges), of whom we have 8 at present, have not been able to keep pace with their appellate files, which have consequently become congested in every Court. I cannot comprehend why an addition should be made to such work. By making all appeals from the decisions of Munsiffs lie to the District Courts, the people lose the chance of their cases being heard on first appeal by a Bench of two Judges in the High Court and they also lose the benefit of a pronouncement on facts by them when the findings of the Munsiffs and District Judges happen to be concurrent. This is a serious loss. When direct appeals lie to the High Court, in important cases, the chances are, that the Munsiffs would pay greater attention to the trial of such cases and take greater pains to write their judgments. The people would hereafter lose this advantage. The High Court would also be deprived of the opportunity it now has of scrutinising the work of the Munsiffs in regular appeals instead of in second appeals. The expenditure on litigation will be doubled by the parties having to drag their cases through two Courts instead of one. If the direct appeals that now lie to our High Court from the decisions of Munsiffs are taken away, there may not be sufficient work for four Judges in the High Court and nothing can in my humble opinion be more ill-advised than a reduction in their number. I think, in these circumstances, appeals from the Munsiffs' Courts, at least in cases of more than Rs. 1,000 in value, should lie direct to the High Court.

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Mr. Udaya Varma Raja.—Sir, In seconding the proposition of my friend, Mr. Subramonia Iyer, I beg to say that the people lay great store by the supervision of the High Court over the Munsiffs' Courts. When appeals from the Munsiffs' Courts lie direct to the District Courts, the High Court will be simply a second appellate court as far as Munsiff Court suits are concerned. This will diminish the present opportunities which the High Court have of coming frequently into contact with the work of the Munsiffs. This is a safeguard which is very useful and should not be removed.

Mr. Kuruvila.—I stick to my opinion that the modification is not necessary.

President.—Is it alleged that the High Court has got too much work?

Mr. Govinda Pillai.—Every year we have been bringing to the notice of Government that we have got more work than we could get through.

President.—Is it more than what four Judges can get through?

Mr. Govinda Pillai.—Every year we have been disposing of more cases than in the preceding year. Still there will be about 200 cases in arrears at the end of the year.

President.—Under the existing law, the High Court have very good opportunities for judging of the work of the Munsiffs. If, as proposed in the Bill, all appeals are made to lie to the District Courts, will the High Court have the same opportunity?

Mr. Govinda Pillai and Mr. Padmanabha Iyer.—Even otherwise, the High Court go into the facts. In cases in which any point is disputed or doubted, the High Court are sure to go into the facts as if it were a regular appeal.

Mr. Sankara Menon.—When it is shewn that there has been a mistake, my small experience in the High Court shows that we go into the whole question.

Mr. Ananda Row.—Unlike the Madras Presidency, the findings of the lower courts, whether concurrent or otherwise, are not final here.

President.—In effect, Mr. Govinda Pillai says that, even if no regular appeals were to come from the Munsiffs to the High Court, the High Court would be in an adequate position to judge of the work of the Munsiffs. In regard to the allegation that the High Court are not overworked, he says that they *are* overworked and that they have been complaining of it, though by getting rid of the appeals under Rs. 1,000, there would be sufficient relief.

Mr. Padmanabha Iyer.—The second appeals to the High Court come to but 8 or 10 per cent. in the cases of some District Courts.

President.—Is it to be understood that there is not the tendency to take second appeals to the same extent as regular appeals?

Mr. Padmanabha Iyer.—It all depends upon the Judges.

President.—I should like to know what relief the High Court would have by getting rid of the appeals between Rs. 500 and Rs. 1,000, and whether, taking note of the second appeals that might come, the relief that would ensue by adopting the amendment proposed by Mr. Subramonia Iyer would be adequate. May we not have statistics?

The High Court Registrar was then sent for and he furnished statistics for three years from 1080.

After some further discussion, Mr. Govinda Pillai agreed that the amendment might be allowed as the relief gained by it would be adequate.

The amendment was then put to the vote and carried unanimously.

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Section 17.

Mr. Subramonia Iyer.—As the Civil Courts Regulation (I of 1057) was enacted at a time when there were no definite rules for the valuation of suits, the provision contained in Section 17 was perhaps necessary. Some of the tenures therein referred to having since become obsolete and the provision therein made being now embodied in Section 4, clause 5, of the Court Fees Regulation, there seems to be no necessity for retaining the said provision.

I therefore propose that the said Section may be omitted.

Seconded by Mr. Kuruvila.

Carried.

Mr. Ananda Row.—I beg to propose that the Bill as amended be read again on a future day of which notice shall be given.

The motion was put and agreed to.

The Council adjourned at 3--10 P. M.

P. RAJAGOPALA CHARI,
President.

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